
Universal Prosperity

In early January 1850, a boat carrying the renowned but officially disgraced 66-year-old official Lin Zexu moored on the Xiang River by the city of Changsha, as Lin made his way home to Fujian accompanied by his three sons, his late wife's coffin, and a large quantity of books. While passing through Hunan, Lin sought out a local scholar in his late thirties named Zuo Zongtang, who had been recommended to him as a serious thinker on policy matters. On board the vessel, Lin and Zuo talked long into the evening about the problems afflicting the Qing Empire, of which the most important involved "bureaucracy, finance, and maritime defense." As Zuo would later recount, they went over "countless" documents together, discussing in particular affairs related to Xinjiang, where Lin had formerly been exiled. One day, he thought, that far-off region could be made as politically secure and economically productive as the Yangzi River Delta.¹

After being dismissed in 1840 from his high-level position as the viceroy of Liangguang for his role in helping to "provoke" the First Opium War, Lin had spent several years working in exile in the region of Ili, near what is now China's border with Kazakhstan. There followed several years of service in Ili and elsewhere, most recently Yunnan, where his wife passed away in 1847. Lin was now returning to his native Fuzhou to retire. Once home, however, he hardly had time to settle before learning of the death of Emperor Daoguang, who had raised Lin to his former esteemed rank and then laid the blame on him after full-scale war broke out with Britain. Following Daoguang's death, his nineteen-year-old son and successor, the Manchu prince Iju, ordered Lin Zexu out of retirement to help face a new crisis – the growing, religiously tinged uprising against Qing rule centered in Guangxi that would soon transform into the Taiping Rebellion.²

Several officials remonstrated to the new emperor that Lin's health was weak and that he likely could not bear the strains of returning to active service, but Iju angrily rejected these views, especially because they came from officials who had, after Lin's removal, reversed course to sign the conciliatory 1842 Treaty of Nanjing that opened new ports for British trade, provided reparations for the opium that Lin had destroyed, and handed over Hong Kong as a "supply depot." In a scathing imperial order issued soon after taking

the throne, Iju demoted the Manchu high officials Mujangga and Kiyeng, who had both influenced his late father's appeasement policies. The Lin affair provided some useful ammunition: Mujangga had "sought to prevent the use of talent" out of jealousy for his own influence, and "tried to confuse Me with false reports." Kiyeng, meanwhile, was to be punished most of all for his decade-long course of conciliation, in particular, during his tenure as viceroy at Guangzhou, where he had gone on to sign treaties with France and the United States on terms similar to those of the Treaty of Nanjing. Both officials, Iju charged, had abused his father's favor and "usurped imperial authority" (*qie quan* 竊權).³ Such behavior would now be banned, Iju declared. In reality, however, his decade-long rule was to be marked by even worse defeats and, eventually, a near-total submission to Western commercial and legal structures. By then, Iju's official reign name, in Chinese *Xianfeng* and in Manchu *Gubci Elgiyengge* – both meaning "Universal Prosperity" – would seem deeply ironic.

As it turned out, the reports of Lin's frail health were apparently accurate after all, as he died en route to his new post, never to take up the task of suppressing the new rebel movement. British colonial officials in Hong Kong expressed some regret at the death of their erstwhile opponent, whose tough approach might now have been helpful in suppressing the "banditti" and "desperadoes" who threatened local trade as well as state authority.⁴ They were displeased, as well, with the demotion of Kiyeng: Future concessions might have been more easily procured had he stayed in office in Canton.⁵ Also of concern was competition from foreign rivals including France and (particularly) Russia, who were already seeking to emulate British success in China. And, perhaps most importantly, the British mercantile community both locally and back home was vocal that the status quo remained insufficient. Full access to China's vast interior market would have to come sooner or later. Perhaps, many British merchants and politicians came to feel, the key to commercial progress was to establish direct, European-style diplomatic and legal relations with the Throne, preferably but not necessarily by noncoercive means.⁶

Law among States?

When Kiyeng was brought to task by his new emperor over concessions like paying reparations for the opium destroyed by his predecessor at Guangzhou, opening up ports, approval of extraterritorial jurisdiction, or *de facto* legalization of missionary activities, he could draw upon the words of the late Emperor Daoguang for his defense. These moves, he said, had all been but ways to "set aside minor details and focus on grand policy matters" – for example, allowing consular jurisdiction would help Qing officials avoid adjudicating "foreign nuisances."⁷ Kiyeng maintained that he had faithfully followed the orders he (like Lin before him) had received from Iju's father:

At the very start of the tensions with Britain in the early 1830s, and periodically since then, Daoguang had ordered his officials to “first of all avoid harm to stateliness [*guoti*], and secondly avoid provoking hostilities.”⁸ When Lin promoted assertive defiance of British demands, and Kiyeng promoted conciliation, both cited stateliness as the basis for their policies.

The term translated here as “stateliness” (*guoti* 國體) was as vital to late Qing political cosmology as it was capacious and, at times, ambiguous.⁹ Literally referring to the “form” (*ti* 體) (which itself could mean “body,” “structure,” “system,” “essence,” or “propriety,” *inter alia*) of the “state” (*guo* 國), this ancient term was already in use by the time of imperial China’s unification under the Qin Dynasty.¹⁰ At times, it was used to refer to “the state as a whole,”¹¹ or, synecdochically, to high-ranking ministers, laws and institutions, or other core elements of the polity and its inherent order.¹² The term’s most common concrete applications in Ming- and Qing-era texts were in the context of impeachments against corrupt or misbehaving imperial officials who had harmed the “form of the state” by improper conduct or overstepping their powers.¹³

Often, *guoti*’s most important dimension was an overriding sense of “state dignity,” rather than a set of specific formal norms identified identically among those using the term. This had parallels in the West. Clifford Geertz, for example, writes that the Western concept of “the state” had united the three “etymological themes” of estate, statecraft, and “stateliness,” of which the last conveyed “pomp, in the sense of splendour, display, dignity, [and] presence.”¹⁴ Commenting on this complex of symbols, Martin Loughlin has argued,

[S]ince the quality of *stateliness* is inherent in the idea of kingship, the presence of majesty itself operates as an ordering force. Only under modern conditions, in which the charismatic facets of political leadership are gradually superseded by the emergence of an impersonal conception of rulership, could the concept of the state be detached from the splendour and display of majesty [and] express the idea of the *public realm*.¹⁵

In the Chinese context, at least, *guoti*/stateliness/state form certainly conveyed some notions of a transpersonal public realm even while still firmly bound together with the imperial majesty – as we will soon see in its 1850s invocations. Of course, Han Chinese political cosmology had, since the pre-unification era, treated the rule of a legitimate emperor as notionally universal, applying at least in principle to “all under Heaven.” At various times, Chinese dynasties had indeed been forced to acknowledge more equal relations with foreign states, but they then tended to later reassert their nonpareil status. The Manchu Qing rulers, however, combined an (eventual) embrace of this “Han” discourse with alternative notions of political ideology and great deal of *Realpolitik* in managing their sprawling empire.¹⁶

Although they had initially expressed reserve regarding *guoti* and other Chinese political terms, the empire's new Manchu rulers began to make frequent use of it by the time of Prince Iju's long-reigning great-grandfather, Qianlong. Indeed, Qianlong did much to extend the term *guoti*'s application to the realm of "foreign relations" – specifically invoking it to assess whether certain forms of interaction with both hostile and friendly rulers outside Qing control were compatible with the Qing Empire's own idiosyncratic moral and political structure, that is, the *abkai gurun i doro* (Ma.)/*tianchao tizhi* (Ch.) or "order of the Celestial Dynasty."¹⁷ As such, the term *guoti* and the Manchu concept *gurun i doro*, the "proper order of the state (or dynasty)," with which it came to be associated, were treated as distinct from, though linked with, the idealized Chinese political ontology comprising degrees of status radiating out from the Son of Heaven.¹⁸

These concepts matter to the history of China and international law because it was in these terms, not those of either state sovereignty or true universal rule, that the topic was first approached. In line with the element of pragmatism in Qing rule, neither Kiyeng nor Emperor Daoguang seem to have considered the former's conciliatory approach to interactions with the West as compromising Qing stateliness. Rather, these were ways to help "pacify, bridle and rein"¹⁹ warlike foreigners while maintaining state dignity and order. Requests truly incompatible with the "proper order of the state," such as for diplomatic stations in Beijing or a regularized exchange of permanent emissaries, could be outright denied. In other situations, though, a bit of tactical finessing could be employed. The exchange of letters between US president John Tyler and Daoguang surrounding the Treaty of Wangxia in 1844, for example, was stage-managed by Kiyeng as a game of trilingual code-switching between English, Chinese, and Manchu, with terms subtly shifting between versions in order to avoid offending either side's sensibilities.²⁰

The *Daicing Gurun* (Great Qing State), too, would not sound ontologically different from the *Ho Juweng Gurun* (the United States) or, for example, the *Coohiyan Gurun* (Korea); the Chinese version's *Zhonghua*, by comparison, reasserts the Sinocentric world order.²¹ In the Ming era, it had been exceptionally rare for any official imperial text to refer to China alongside any other counterpart as two equivalent "states."²² Yet, a Qing-era translation of a Manchu imperial message could easily refer to a treaty with the United States as "benefitting the people of both states" (*juwe gurun i ursebe ishunde tusangga* [Ma.]; *li liang guo zhi renmin* 利兩國之人民 [Ch.]). There were, in any case, already Qing precedents for such usage. The relationship with Russia, especially, had long been construed on terms of relative equivalency, facilitated by vast distances. The 1689 Treaty of Nerchinsk that resolved border issues, for example, while composed in Latin by Jesuit intermediaries, was also produced in two unofficial translations in Manchu and Russian. The former, like the later nineteenth-century agreements with Western states, had

already referred to the contracting parties as *juwe gurun* (“both states”; *utrum imperium* [La.]; обоих государств [Ru.]).²³

The basic notion of an interstate legal agreement²⁴ that establishes the framework for trade and passage of persons across delimited territorial boundaries was, thus, not in itself unfamiliar. At issue was whether the specific provisions to be determined were incompatible either with the dynasty’s interests or with the ambiguous but all-important value: *guoti*. As per the views of officials like Kiyeng that had promoted friendly relations, if the Western side cared only about their greed for tangible profits (as Qing officials at this point invariably thought to be the case) and the Qing side insisted only on the most essential principles of stateliness (though they may disagree about what exactly that essence consisted of), then peaceful coexistence might prevail. There would be no need, in that case, for extensive investigation of the other side’s aims, ideology, or rules and customs. Accordingly, before the 1860s, there would be only one attempt by a Qing official to inquire into the Western idea of a “law of nations,” and it was not by one of the officials “friendly” to foreign powers, rather very much the reverse.

Sovereignty and Property

In July 1839, shortly before being disgraced with blame for the First Opium War, Lin Zexu had ordered one of the first ever translations into Chinese of a Western text of international law, a handful of pages from Emer de Vattel’s *Droit des Gens*.²⁵ Neither the passages from Vattel (which he is not known to have ever directly cited) nor Lin’s earlier letter to Queen Victoria that admonished her over the opium trade had any clearly discernable impact on the conflict. Indeed, although some of Lin’s actions may have been influenced by his access to the Vattel text,²⁶ by the point that he had requested the translations, he had already destroyed opium cargoes and restricted British trade. With further escalations on both sides, a *de facto* state of war began by late September.

The translated sections of Vattel’s *Droit des Gens* (in the 1834 English edition by Joseph Chitty), amounted to no more than a few pages of text. Yet these were enough to convey clearly that the power to exclude foreign trade was indeed explicitly part of a state’s inherent authority: “the lord of the territory may, whenever he think proper, forbid its being entered.”²⁷ Aside from confirming that foreign traders’ contraband could be confiscated and was indeed subject to the laws of a host country, there were specific references, as well, that noted without condemnation the long-standing Chinese and Japanese practices of restricting commercial access to foreigners.²⁸

More difficult to parse was the conceptual basis for that power, and its supposed limits. As one of the most important foundational concepts of Vattel’s text,²⁹ “sovereignty” is invoked dozens of times throughout the work.

As it happened, the brief translated sections that Lin commissioned even included an outright definition of this alien term:

The sovereignty is the right to command in the whole country; and the laws are not simply confined to regulating the conduct of the citizens towards each other, but also determine what is to be observed by all order of people throughout the whole extent of the state. In virtue of this submission, foreigners who commit faults are to be punished according to the laws of the country.³⁰

In the 1839 Chinese translation overseen by Lin's assistant Yuan Dehui and the American missionary doctor Peter Parker, however, this sentence was transformed:

国家抚有天下，治理亿兆，而律例亦不止此。自法制一定，普天之下莫不遵守，故外国有犯者，即各按各犯事国中律例治罪。

The state occupies and controls [its part of?] the world (*Tianxia*), governing and ordering the innumerable [people], but the laws are not limited to this alone. Upon the legal order's promulgation, all throughout the world must obey it, and if foreigners violate it, each will be punished based on the laws of the state where they have done so.³¹

In this first major encounter of Chinese interlocutors with ideas of "sovereignty," then, the term was simply ignored. However, what is so interesting about this ill-fated translation encounter is how unimportant conceptual differences were to the practicalities of the matter at hand. For Vattel's actual concrete point in the translated passage is indeed adequately conveyed: Even if China were to be treated as just a state like any other, rather than a notionally universal moral/political authority presiding over all *Tianxia*, it could restrict its borders and trade at will. "Every state has ... a right to prohibit the entrance of foreign merchandizes," another passage reads, "and the nations that are affected by such prohibition have no right to complain of it, as if they had been refused an office of humanity. Their complaints would be ridiculous."³²

The actual problem, ironically, had to do not with Chinese universalism and Western particularism, but the reverse. For in taking actions such as destroying the opium shipments, Lin may have exercised a theoretically valid authority of a state to enforce its own laws domestically, yet he had *also* infringed rights in property legally attributed to a foreign state and its citizens. *That* division, between rights of sovereignty and rights of property – the latter being seen as in theory universally enforceable – was a key feature of Vattel's text that was lost in translation. Particularly important was the idea that "the *empire* and the *domain*, or *property*, are not inseparable in their own nature, even in a sovereign state."³³ Vattel's French terms *empire* and *domaine*, and their close English equivalents in Joseph Chitty's 1834 translation, are used as stand-ins for the Roman law terms *imperium* and *dominium*. This conceptual

binary would increasingly shape the Western international legal order introduced to China from 1842 onward.

Already for Jean Bodin in 1576, “sovereignty” could be directly equated with *imperium* (aka “empire”), and thus distinguished from the realm of property relations, including those comprising the so-called public domain.³⁴ In the two centuries between Bodin and Vattel, the conceptual distinction had grown increasingly clear to the effect that, while states may stand alongside each other as sovereigns, equally politically supreme within their own territories, they were also uniformly *limited* vis-à-vis property rights. Over those, states exercised not empire, but instead merely jurisdiction, as well as what was called *dominium eminens*: eminent domain. In that realm, which comprised both real and moveable property and other such forms of wealth, a state could only be first among equals: If it seized property for some compelling reason of public interest, for example, it ought to do so in a just manner and provide fair compensation.³⁵

Moreover, foreign states and citizens could acquire property rights in each other’s territories, creating obligations for the sovereign on that basis.³⁶ The precise contours of the *dominium* concept were still rather hazy in the mid nineteenth century, whether as a matter of international law or broader public law doctrine. However, what tended to unite the different invocations of the notion was that “whether understood as a public or private power, its [ultimate] source was always the right and freedom of the individual.”³⁷

If validly acquired, then, *dominium*/property rights in opium should be protected just like any others. That was certainly the view of Lin Zexu’s counterpart on the British side in the dealings leading to the First Opium War, Charles Eliot, who despite personal distaste for the opium trade, “consider[ed] himself bound to protect, not only British persons, but British property.”³⁸ During the British parliamentary debates associated with the war, the premise of defending property rights played a highly significant role, as did Vattel’s text in Chitty’s 1834 translation, which included extensive additions and comments reflecting (and justifying) recent British colonial and imperial practices.³⁹ Some pro-war voices tried to invoke Vattel’s arguments and Chitty’s emendations regarding acquired property rights and duties of sociability to counter the former’s other, inconvenient, assertions about the rights of sovereigns to restrict trade. Meanwhile, others in the war party adopted a different approach, arguing that membership in the community of international law should be limited, its protections “interpreted as applying only to such commercial states as recognize the general principles of public or international law.”⁴⁰ Gradually, as Western property interests in China grew under the regimes established by the Treaty of Nanjing and its successive follow-up agreements, the latter view would gain sway.

The sections of Chitty’s Vattel that Lin had translated did very little to elucidate this deeper conceptual dynamic at work. Instead, they suggested a world order of equal sovereigns that (albeit in tension with traditional Han

Chinese universalist political discourse) was actually easily assimilated to the Qing willingness to describe their polity as a *guo/gurun* alongside semi-peers held at arm's length. After Lin was dismissed by Daoguang, he entrusted his collected translations to the reformist Hunanese scholar Wei Yuan, who would include them as part of an influential geographical anthology titled *Illustrated Treatise on the Seafaring States*. The Vattel translation, however, was apparently not seen by Wei as important enough to feature in the initial publication in 1844, though it was then included in expanded editions of 1847 and 1853. Regardless, these parts of the work drew relatively little attention compared with its much more copious material on world geography, aspects of European political history, and military/naval affairs, among others.⁴¹ By the time Lin died in late 1850, his erstwhile attempt at engaging with the Western law of nations had made few clearly discernible intellectual waves.

Trade, God, and Law

Lin's early ersatz translation project aside, the law of nations would first come to China as part of a web of other foreign ideas spanning the realms of economics, politics, and theology. Ideas from all of these fields were invoked in pedagogical projects aimed at transforming China. Particularly influential during the earliest stage of China's "opening up" between the 1830s and 1850s was the Lutheran missionary and sinologist Karl Gützlaff. Born to a tailor's family in Pomerania in 1803, in his early teens, Gützlaff obtained official support for his future schooling by audaciously presenting Prussian King Friedrich Wilhelm III with a laudatory poem. A few years later, he underwent a Pietist conversion experience and embarked on a missionary career. Arriving in Java in 1827 on behalf of the Dutch Missionary Society, Gützlaff soon left its bureaucratically organized service and shifted his growing ambitions to China. A biographer has suggested that "hope of social mobility, an appetite for adventure, the ideal of the romantic hero, as well as the desire to bring the gospel to the heathen" motivated Gützlaff to pursue a missionary life and to choose for his target the vast, inaccessible Qing realm.⁴²

In pursuit of these aims, he had already by the early 1830s engaged in daring efforts alongside fellow missionaries and merchants based in Canton and Macau, including major opium-smuggling firms, to gain access to China's interior for purposes of both trade and proselytization. While interpreting for opium merchants, Gützlaff began translating a new edition of the Bible in Chinese and also worked to produce and disseminate Chinese-language material on Western topics. Such "intellectual artillery" would, some in the Western trading community hoped, help awaken the Chinese to the truths of Christianity and free trade, allowing "barbarism [to] vanish before civilization" in China just as in other zones of European expansion.⁴³

At no prior point in history could a roving Westerner with Romantic ideas about transforming China have played a role quite like that of Gützlaff in the 1830s. In 1838, for example, he published pieces in his Chinese-language *East and West Monthly Journal* that introduced Western political systems to readers in Canton. In such works, Gützlaff was among the very first to attempt to convey in Chinese European notions of political liberalism, which he usually translated as “the principle of self-rule” (*zizhu zhi li* 自主之理) and of national autonomy, which he at times translated as *zi cao qi quan* 自操其權 – perhaps best loosely rendered as “wielding state authority autonomously.” In attempting to convey the role of parliament in Britain’s political system, he combined these terms, describing it as holding the *zizhu zhi quan* 自主之權 – that is, “state authority of self-rule.”⁴⁴ This passage, from the year before Lin’s Vattel translation, was perhaps the first ever attempt to convey Western ideas of “sovereignty” into Chinese, though they were not presented in a systematic or coherent fashion.⁴⁵ Gützlaff’s goal was, in any case, not to spread ideas of sovereignty but rather of liberal political economy and Protestant Christianity. The character *zhu* 主, conveying in Chinese lordship, ownership, and rule (rather like the Latin *dominus* and its various derivations as forms of *dominium*), appeared frequently in his texts, most often attributed to God and “free” peoples.

Describing liberal government as allowing great personal freedom combined with legal restrictions on the powers of monarchs and officials, he suggested that the wealth and power of Britain and, to a lesser extent, other Western states, was owed directly to this powerful ideology and its religious foundations.⁴⁶ Such discussions were interspersed with brief essays and reports on the benefits of trade, recent political and economic news, and historico-religious material. In his writings on such topics, Gützlaff at times adopted the narrative trope of a fictional dialogue among Chinese scholars supposedly fascinated by Western culture and ideas. In reality, his conversion efforts, both in matters of religion and political economy, proved far less effective than he had evidently expected.⁴⁷ Far more successful were his books on China in the West.⁴⁸ By the end of the 1830s, moreover, Gützlaff would serve as an interpreter for the British during the First Opium War and then as Chinese Secretary for the British administration in Hong Kong.

Gützlaff died of illness at age the age of forty-eight in August 1851, a bit less than a year after Lin Zexu. He had at that point already trained various local converts and Western officials and missionaries. Four years earlier, for example, he had baptized a thirty-year-old former fabric merchant from Dongguan named Wang Yuanshen, who had arrived in Hong Kong in dire straits after his business’s collapse due to the recent opening of Chinese ports to English textiles. From then, Wang would become one of the most trusted and faithful aides to Gützlaff and to the several Lutheran brethren the latter invited from the Berlin Missionary Society. In a history of Christian missionary activity in China written decades later, Wang would recall his good fortune

at having encountered the “true,” Protestant faith at a time when it was still utterly unfamiliar to most of his countrymen.⁴⁹ The long-lived Wang would pass his devout Lutheran beliefs on to his son as well as to a grandson, Wang Chonghui, who, as we will see in later chapters, was to become perhaps China’s most important and influential twentieth-century international lawyer.

An important new associate of Gützlaff’s toward the very end of his life was the American Presbyterian missionary William Alexander Parsons Martin. Martin was an Indiana native, born to a family of frontier missionaries and raised with the aid of a former slave housemaid who remained in his Virginia-born mother’s service despite residing in a free state.⁵⁰ In later life he recalled that his “interest in China was first awakened in 1839 by the boom of British cannon battering down her outer walls.”⁵¹ Though only thirteen at that time, he would have already been contemplating destinations for missionary service, like his father and his brothers.

A decade later, on the orders of the Presbyterian Mission Board, Martin first arrived in Hong Kong on April 10, 1850, his twenty-third birthday, and immediately set out to conquer its then still-rugged Victoria Peak via an arduous hike.⁵² Over the years to come, he would become the most important nineteenth-century figure in the introduction of international law texts to China. Like Gützlaff before him, Martin would also throughout his life endorse the agenda of “opening” China to Christianity, free trade principles, and liberal politics. Though he arrived in China a decade too late to have anything to do with the First Opium War, Martin would long espouse the view that Britain had indeed had cause for a “just war” in the 1830s based upon the Qing refusal to establish formal diplomatic relations or liberalize trade.⁵³ These ideas were, as we have seen, technically un-Vattelian. However, they closely reflected the zeitgeist in 1850s British-ruled Hong Kong.

“China Need Not Handle That”

For Qing intellectuals, Lin Zexu’s reputation as a prophet of “national security” was further cemented soon after his death by events in the far west, today’s Xinjiang. During and after his exile there, Lin’s call to develop the “Western Regions” had been in part motivated by fears of Russian incursions that might resemble those of the British in China’s south.⁵⁴ As early as 1851, another “foreign disturbance” indeed emerged in connection with Russian demands for increased trade access (along with extraterritorial consular jurisdiction) to match the privileges that had been obtained by Western states since the end of the First Opium War.

By the mid nineteenth century, various political actors in the Russian Empire were dissatisfied with the territorial and diplomatic status quo that had been maintained with the Qing since 1689. A particular focus was the vast region of the Amur River, spanning much of Outer Manchuria. As early as

1843, for example, the Russian admiral and explorer Ivan Kruzenshtern had advised that "[China] has already agreed to retreat from many of its ancient rules relating to trade with European powers, [and so] it will of course concede to its powerful close neighbor the right of free navigation along the Amur, so necessary to Russian trade."⁵⁵ Projects for the commercial and military development of Siberia, as well as the acquisition of new fertile and strategically important territory, facilitated the political rise of Nikolai Nikolaevich Muraviev – later to be ennobled as "Count Amursky" – who set himself the task of promoting Russian expansion in the region after his appointment as Governor-General of East Siberia in 1847. In both Manchuria and Xinjiang, Russian officials were by the beginning of Xianfeng's reign actively seeking to exert influence and to assert a very different relationship between the two empires.

At the Qing court, Russian requests for the same benefits granted to Britain and others were met with equanimity. Xianfeng instructed his representatives that there was "some benefit and no harm" in approving Russia's requests for trade access, establishing consulates, and extraterritorial jurisdiction in two of its three requested zones in Xinjiang. Thus, the resulting 1851 Treaty of Kulja extended these privileges to Russia in Ili and Chuguchak, but not Kashgar. In the name of preserving China's "long-term peace" with Russia, such compromises were fully permissible, and compatible with "both *guoti* and border defense."⁵⁶ The Qing pragmatism as to claims of universal political rule was very much on display in Xianfeng's instructions. In a turn of phrase that Ming rulers would have found outrageous, for example, he referred to Russian extraterritorial consular jurisdiction with the straightforward description: "China need not handle that" (*Zhongguo bu guan* 中國不管).⁵⁷ A similar willingness to accept ontological parity for pragmatic purposes was on display a few months later when, in response to reports of Russian administrative reorganization in Siberia, Xianfeng told his officials: "these are all internal matters of that state; they have nothing to do with China" (*jun xi yi guo nei zhi shi; yu Zhongguo wu gan* 均係伊國內之事。與中國無干).⁵⁸

Though there is no known evidence to suggest that Xianfeng or his advisors would have encountered Lin's commissioned translation of Vattel, these postures were indeed consistent with a more or less orthodox "Vattelien" view of intersovereign relations. China's Western interlocutors, meanwhile, were beginning to innovate new legal forms, or rediscover old ones ripe for profitable transplantation (in the case of consular jurisdiction), and applying these ideas to the Qing territorial space that was newly opening up as a field for power and trade.⁵⁹ The pattern of an unregulated "private" expansion of European settlers in non-Western spaces being followed by public power and formal legal structures had globally intensified since the turn of the nineteenth century, from the North American West to India, Burma, Australia, and New Zealand, among others.

Private settlement was also a significant element of Russia's new expansion into the geopolitically and commercially enticing space of Outer Manchuria. Throughout the early 1850s, Muraviev continued to seek to convince St. Petersburg to permit a more aggressive line in the expansion of Russian influence over the Amur region. The Qing acquiescence to most demands in the Treaty of Kulja greatly aided him in making his case, and by 1854 he had received approval to begin negotiations for the opening up of the Amur River and also, if possible, the acquisition of some of the territories already being staked out by Russian settlers.⁶⁰

While these envisioned Amur negotiations would not begin in earnest for several more years, another set of important transnational developments was occurring in Shanghai. Shanghai's trade had grown immensely since its opening up to foreign commerce following the 1840s treaties, and this trend continued during the Taiping rebellion and other disturbances in the Yangzi River Delta region. When in 1853 the city was occupied by an insurgent group, disrupting revenue collection, this provided the impetus for a plan developed among Western consuls to create a new framework for collecting customs revenues. Under titular Qing authority but de facto management as a primarily British-run bureaucracy, the Maritime Customs Service (MCS) was an idiosyncratic, hybridized venture.⁶¹ At the same time, with its functions of tax collection, inspection, and later policing and infrastructure, the MCS also embodied a new logic of international organization being applied on the frontiers of Western commercial expansion.⁶²

Central to the establishment of the new transnational organization in 1854 were the British Consul in Shanghai, Rutherford Alcock, and the Vice-Consul, Thomas Wade (who had been yet another disciple of Gützlaff's). The latter was appointed to the Shanghai Customs House along with counterparts from the United States and France, and would serve as the de facto first director of the MCS. Although it had been founded merely as a matter of expediency during a period of interregnum in Shanghai, with customs revenues going uncollected, Qing officials proved willing to accept the arrangement for the remainder of the 1850s on a localized basis. Later on, it would be extended to all of China's open ports and waters, with authority by the early twentieth century encompassing, *inter alia*, "domestic customs administration, postal administration, harbour and waterway management, weather reporting, and anti-smuggling operations."⁶³ From its modest and entirely localized beginnings, the MCS would eventually become the cornerstone not only of Qing trade, but of the empire's entire fiscal state.⁶⁴

The transnational interactions of 1853–1854 in Xinjiang and Shanghai were very different, but both showed how Xianfeng, despite early vehemence about appeasement, was willing to take a cooperative stance to Western initiatives. By this point, however, Western commercial ambitions in China demanded a full institutionalization of Qing legal obligations in place of any discretionary imperial favor. Two more of Gützlaff's diplomat-sinologist protégés played

significant roles in the process by which this was carried out. One was Wade's successor at the MCS, Horatio Nelson Lay. The other was Harry Parkes, a relative of Gützlaff's British wife. In 1856, when Parkes was serving as the acting British Consul in Canton, he and the then-Governor of Hong Kong, John Bowring, helped to transform a minor fracas over the seizure and inspection of a Chinese-manned but British-flagged vessel in Guangzhou, the sailing ship *Arrow*, into a pretext for conflict. This "insult to the flag" was used by Lord Palmerston – foreign secretary during the First Opium War and prime minister from February 1855 – and others to secure support for coercing Qing authorities to make new concessions as well as to make good on old ones, such as Canton's full opening as a treaty port, that still remained unfulfilled.⁶⁵

Reconstituting Extra-European Spaces

In 1856, the Regius Professor of Civil Law and former Drummond Professor of Political Economy at Oxford, Travers Twiss, referred to the current situation of the Far East in his first influential treatise on the law of nations. Relying on the standard distinction between a "natural" and a "voluntary" (or "positive") law of nations, Twiss wrote that European states' coercive dealings with China "as contrasted with their intercourse with one another" showed how natural law rules could be applied in relation "to a less cultivated state of mankind." On the other hand, "non-intercourse with Japan ... may be regarded as a recognition of the principle ... that independent nations are not compellable to enter into society with one another or to hold intercourse of any kind."⁶⁶

Twiss' attempt to distinguish the Qing and Japanese cases was difficult to square with the ongoing process by which both states were being coerced to open their doors. There was a franker acknowledgment of this dynamic in another influential treatise of the previous year, the posthumous sixth edition of American diplomat-jurist Henry Wheaton's *Elements of International Law*. While serving as US minister to Prussia in the early 1840s, Wheaton had argued in favor of US action to begin opening up China's markets and also supported Russian aims to create a free navigation regime on the Amur River. In the sixth edition edited by William Beach Lawrence, the latter added passages extolling progress in "the march of free trade" and in the commercial promise associated with the recent opening of China and Japan, as well as the useful regime of extraterritorial jurisdiction that supported it.⁶⁷

Vattelien ideas about the "voluntary" character of diplomatic and commercial intercourse were swiftly losing their relevance as a matter of doctrine as well as in geopolitical practice. Undoubtedly the greatest transformative factor in this shift and in its practical implications for the Qing Empire was the 1853–1856 Crimean War, where Russian expansion into Ottoman territory was checked by a coalition led by Britain and France. The ensuing Congress

and Treaty of Paris of March 30, 1856 set the stage not only for a major reshuffling of the intra-European balance of power and international legal order – particularly via the formal “admission” of the Ottomans as a formally equal sovereign state – but also greatly reinforced both Russian and Anglo-French motives for further expansion into Qing space. In the former’s case, acquisition of the Amur zone could help to make up for grave recent losses elsewhere. For the latter, meanwhile, the forms of global legislation innovated at Paris might find useful new applications.

The Treaty of Paris has long been regarded by international lawyers as a milestone in the advancement of modern “positivist” conceptions of international law, that is, as a body of rules legislated by treaty and custom among a community of states – though, as we have seen, a crucial aspect of “positivity,” its voluntary character, was increasingly restricted to Europeans.⁶⁸ The treaty also saw the deployment of an explicit formula that asserted the existence of a “public law of Europe” (*droit publique de l’Europe*), developed since 1815, to which states could accede as if signing up to a systematic body of rules similar to a legal code.⁶⁹ In “joining” this public law system in 1856, the Ottoman Sultan effectively restructured the legal order of his empire, not only by confirming preexisting rules and institutions, but also accepting newly imposed ones.⁷⁰

The 1856 Treaty functioned much like a transnational constitution guaranteeing, *inter alia*, the “neutralization” of the Black Sea, freedom of navigation and commerce there and in the Danube River, the *de facto* autonomy of the Christian principalities over which the Sultan was now to exercise mere “suzerainty,” and other such commitments favorable to Anglo-French interests. The economically and strategically vital Danube River was not only to be “internationalized,” but, following a model first applied to the Rhine in 1815, was also to have created for it a dedicated international organization, the “Danube Commission,” to administrate, regulate, and police the waterway.⁷¹ The signatory powers of the treaty would also be able to station forces at the river’s mouth. Meanwhile, Britain, France, and Austria signed a separate agreement among themselves pledging to guarantee “the independence and integrity of the Ottoman Empire.”⁷² Some international lawyers would later describe the 1856 Treaty of Paris as the first time a non-European power was admitted to join the post-Vienna European Concert. It would be more accurate to say that it marked the creation by European lawyers of a *sui generis* public law regime for a vast “external” realm, with agency and benefits flowing to the West.

Much the same approach was soon to be adopted with respect to the Qing space. The British policy was to be spearheaded by Lord Palmerston’s “High Commissioner and Plenipotentiary in China and the Far East,” the Earl of Elgin, personal name James Bruce. From 1857, Elgin took the leading role in what would often be misleadingly called the “Second Opium War.” The seizure of the British-flagged *Arrow* vessel had provided a (shaky) basis for

military reprisal against the Qing state, though this was delayed by the outbreak of the Indian Rebellion of 1857 – violent suppression of which would mark the end of Company rule and beginning of direct colonial administration. By the end of the year, Elgin shifted focus to China and his forces captured Canton, sending its Viceroy Ye Mingchen to Calcutta as a prisoner of war. Meanwhile, the last Mughal emperor, Bahadur Shah Zafar, was being put on trial in Delhi for, *inter alia*, “Assuming the sovereignty of Hindostan” and “Causing and being accessory to the murder of the Christians.”⁷³ Though under distinct circumstances and with different implications, the beginning of the British Raj in 1857 was as monumental a transformation as the reconstitution of the Ottoman Empire via treaty that had been carried out the previous year. Next up was China.

Reprising their cooperation in the recent conflict with Russia, Napoleon III’s France entered the war soon after Britain upon the pretext of an “exemplary reprisal” over a Catholic missionary that had been executed by authorities in Guangxi for illegal proselytization. Meanwhile, though the United States and Russia resisted British entreaties to join the conflict, they shared common interests in further opening of Qing space, joining ensuing negotiations. As had been the case for the Crimean War allies with respect to the Ottoman realm, there was a set of shared goals and aims widely recognized among Western states active in China, though different aspects might be emphasized by this or that power, or individual commentator.

One notable effort to sum up shared goals of the West was articulated in 1857 by William Martin, who since arriving in China in 1850 had relocated to Ningbo in the Yangzi Delta region. In a letter to the former US minister to China, Caleb Cushing, Martin argued that the United States should recognize the Taiping rebel movement as a sovereign state. The borders of the Qing realm that foreigners had heretofore recognized, he thought, mattered little – racial differences between groups, like Han and Manchu, were far more important. Seeing the Taiping movement as an instantiation of global patterns of religious and civilizational progress, Martin drew on an American frontier analogy to help convey his bold proposal: “It was not the waters of the Rio Grande, that divided Texas from Mexico . . . but the impossibility of Anglo-American Protestants . . . being one with Spanish Catholics.”⁷⁴ Just as “Protestant” Texas had become a more enlightened polity after breaking off from Mexico, or Christian Greece from the Muslim Turks, so, Martin thought, might the Han Taiping rebels if given foreign support, firepower, and autonomy.⁷⁵

At least for the time being, he argued, it would be best to recognize two legitimate Chinese regimes – that of the Qing in the regions that they still held sway over, and that of the Nanjing-based Taipings over the center and south: “Divide and conquer,” he avowed with a clear nod to British policy in India since the beginnings of the Company Raj, “is the stratagem to be employed in storming the citadels of oriental exclusiveness.”⁷⁶ Western traders and

missionaries might be able to more quickly gain access to the entirety of China's interior, and the command of its vital waterways, via parallel diplomatic offensives: "Of the Tartars [Manchus], we might demand the navigation of the Seghalien, and access to Peking; while with the Taipings we might treat for the navigation of the Yangtzekiang [Yangzi River], and the opening of Nanking." The thirty-one-year-old Martin appended to these suggestions a brief list of demands upon the Qing emperor that, he thought, should serve as the core of future American policy:

- (1) "Freedom of religious opinion, and religious worship throughout the realm."
- (2) "Freedom to citizens of nations having treaties of amity and commerce with China, to pass and repass through his dominions, at will, without distinction of place."
- (3) That "The emperor shall install a department of Foreign affairs, who can meet the ambassador of foreign countries."
- (4) That "The emperor shall open the Yangtze, and its affluents (or rather all the navigable rivers in his dominions) to steam navigation."
- (5) "And finally, that he shall become a subscriber to the laws of nations."⁷⁷

"That He Shall Become a Subscriber to the Laws of Nations"

Multilateral pressure and mounting military losses led Xianfeng to seek a rapid end to the conflict. First, his envoy responded to new entreaties from Nikolai Muraviev by agreeing in the May 28, 1858 Treaty of Aigun to a "joint administration" of the Amur River Delta region and its full opening up to Russian trade activity. Then, on June 1, Xianfeng sent orders to two specially appointed representatives, the officials Guiliang and Huashana, the former a seventy-three-year-old Manchu grand secretary and the latter a fifty-two-year-old Mongol former court historiographer: They could "take appropriate measures to respond to the foreigners' [various] demands, provided they do not harm *guoti*."⁷⁸ Given the military advantage of the foreign forces, particularly their naval supremacy, Xianfeng now felt that Kiyeng had perhaps been correct in arguing for conciliation. Somewhat desperately, he called the elder official out of disgrace to join the negotiations at Tianjin. Perhaps this familiar and well-liked face could pacify the rampaging foreigners.⁷⁹

That plan backfired, with dark consequences for Kiyeng himself. Serving as an interpreter for the British side, Gützlaff's former student Horatio Nelson Lay produced some of the memorials that Kiyeng had submitted to the throne from Canton years earlier justifying his approach to "bridling and reining" the foreigners. Lay vituperatively depicted such terms (along with customary references to the savagery of aggressive foreign groups, et al.) as signs of duplicity. These aggressive denunciations of Kiyeng, perhaps calculated to intimidate the other Qing negotiators into granting further concessions, forced

the seventy-one-year-old Manchu to withdraw from the proceedings. A severely displeased Xianfeng then sent him a silk cord with which to strangle himself for the affront of "returning to the capital without permission."⁸⁰

In the ensuing negotiations during which Huashana and Guiliang represented the Qing side, each of the foreign powers presented slightly different demands, and the Russian and American sides generally sought to maintain status as neutral mediators rather than belligerents. Nonetheless, the basic shared aims were clear: All four foreign empires hoped for increased trade access, particularly to inland China, the opening of new "treaty ports" where foreign merchants could trade their commodities, reduced tariffs, an official protected status for Christian missionaries and their converts, and a permanent diplomatic presence in Beijing (to facilitate future "equal" negotiations).⁸¹ Given the circumstances, it was understood that the court would accede to many key demands. The exception upon which the emperor insisted, though, was for "provisions concerning ritual" (*chufei li xiang gan ge kuan wai* 除非禮相干各款外),⁸² aka the matters of "stateliness" upon which no compromise could be allowed. The British insistence upon stationing a permanent envoy in Beijing was obviously such an issue. Ironically, before his imperially ordered suicide, Kiyeng had also pursued more or less the exact same course of action, seeking, for example, to have the Russians intervene on the Qing behalf to advise retraction of the diplomatic representation request so incompatible with Qing *guoti*.⁸³

Xianfeng's envoys found themselves intimidated by Lay into signing the Treaties of Tianjin, which included the opening of Tianjin and several other ports; free navigation and trade on the Yangzi River; freedom of religion for Christians; allowing Chinese subjects to freely travel abroad on Western ships; the establishment of extraterritorial jurisdiction; the elimination of the character *Yi* 夷 (invariably translated into English as "barbarian," and earlier a *bête noire* of Gützlaff, among others)⁸⁴ to refer to Europeans along with other non-Qing subjects; excusing the kowtow for foreigners at imperial audiences; and introducing a unified customs regime.⁸⁵ All of these concessions Emperor Xianfeng hoped to avoid, but could, perhaps, reconcile with *guoti*. The same was true of the three slightly different provisions on tolerance of Christianity included as Article 8 in each of the French, Russian, and British treaties. Here, in fact, the Qing side committed explicitly to recognizing that Christianity was not incompatible with *guoti* (in the French text, "l'établissement de l'ordre et de la concorde parmi les hommes").⁸⁶ It is significant that "order" (*l'ordre* [Fr.]; *порядок* [Ru.]) was here translated for internal consumption as *guoti*, showing how Qing ideas of "stateliness" merged with state form and structure.

The other significant appearance of *guoti* in the actual (nonbinding Chinese version of) the text of the 1858 Treaties of Tianjin, however, went more to the heart of Xianfeng's concerns. In Article 3 of the treaty with Britain, it was stipulated that British diplomats could reside permanently or occasionally at

Beijing and would “not be called upon to perform any ceremony derogatory to him as representing the Sovereign of an independent nation, on a footing of equality with that of China.”⁸⁷ In the Chinese version, likely drafted by Gützlaff’s student Lay, the corresponding text is literally: “Great Britain is a self-ruling/autonomous country, and is equal with China [英國自主之邦與中國平等]. The plenipotentiary representatives of Great Britain shall not encounter any ritual that conflicts with [British] stateliness (*guoti*) when paying respects to the Great Qing Emperor.”⁸⁸ Under the most-favored-nation (MFN) clause included in the other treaties, moreover, the same rights claimed would likely be claimed by the other three powers.⁸⁹

While the negotiations were still underway, however, another member of the imperial clan expressed a different view as to what matters touched most directly upon the Qing *guoti*. This was Xianfeng’s half-brother, Prince Gong, personal name Yixin, with whom he had been brought up in the palace. On June 23, after a preliminary treaty with the United States had been signed, but before the more comprehensive British treaty, Prince Gong submitted a memorial warning that “no clause [demanded by the foreigners] is as critical as the one regarding opening up the Yangzi River for trade.”⁹⁰ Rather than focusing on trying to get the foreigners to abandon their plans for diplomatic incursions into the emperor’s sacred space, Prince Gong’s more pressing concern was to avoid providing them a means to dominate China’s waterways.

The vision that filled Prince Gong with dread, though, was a stirring goal for some Western officials and sinologists. As Martin had put it to Cushing the previous year, “it will not be long before our ships are frequenting all ports from Siberia to Cohin-china [sic]; and our steamers stemming the current of all those mighty rivers.”⁹¹ In 1858, Martin himself had the opportunity to promote these aims as the interpreter for Cushing’s successor as minister to China, William B. Reed, during the negotiations at Tianjin.⁹² That the resulting agreement reflected almost all of the goals he had articulated the previous year (except for promoting Taiping secession à la Texas) was, of course, not due to his own influence. The new order imposed at Tianjin was in key respects just an imposition on the Qing emperor of norms applied to the Ottomans at Paris two years earlier. With different methods but similar implications for traders and missionaries, Paris 1856, Delhi 1857, and Tianjin 1858 all looked like “steps on the chain of providence” for Martin, as for Gützlaff’s other spiritual successors.⁹³

Confrontations over Stateliness

“The real task of bourgeois society,” wrote Marx in an 1858 letter to Engels, “is the creation, at least in outline, of a world market, and of a type of production resting on this basis. As the world is round, this task [now] seems to have been brought to a conclusion with the colonization of California and Australia and the inclusion of China and Japan.”⁹⁴ As it happened, the Qing emperor now

seemingly held much the same view about the inevitability of submitting to the Western commercial system, though not to the diplomatic demands that, for him, were of far more fundamental importance.

After Tianjin, Xianfeng dispatched his envoys Guiliang and Huashana to Shanghai where they would, alongside the regional viceroy He Guiqing, take part in the “Shanghai Tariff Conference” with foreign consuls as a gap-filling follow-up to Article 26 of the British Treaty of Tianjin regarding the setting of tariff rates. However, Xianfeng sought to use the talks as a chance to either annul the Treaty of Tianjin altogether or at least eliminate what he still saw as the worst affront to imperial *guoti*: the stationing of diplomats in Beijing.⁹⁵ Before his envoys left Beijing to join He at Shanghai, Xianfeng came to favor (and perhaps himself devised) a so-called internally determined approach (*nei ding banfa* 內定辦法), sometimes referred to by later historians as “the secret plan of 1858,” which he thought might serve as the *coup de grâce* in the coming negotiations.⁹⁶

This internally determined approach comprised a remarkable proposal to waive all tariffs upon all Western trade in exchange for the foreign powers abandoning their request to be received as equals in the capital and (per Prince Gong’s urging) to internationalize the Yangzi.⁹⁷ For the emperor, not only “tariff autonomy” (a term not then in use), but even the very right to have tariffs at all could be sacrificed, if needed in order to preserve stateliness. Had Xianfeng’s internally determined approach been followed, it would have created the largest customs-free market in the world. Based on his estimation that the morally unedified foreigners were motivated chiefly by greed for profits, he insisted that they would view the elimination of all duties as an act of great “benevolence” and as worth exchanging for their insolent diplomatic demands, so incompatible with the Qing order. However, he encountered unexpected resistance even after explicitly ordering his negotiator He Guiqing not to “usurp authority.”⁹⁸

Already early in the negotiations, He Guiqing had submitted a memorial to the court noting that “the two clauses [of the Treaty of Tianjin] that cause the most outrage are the diplomatic stations in the capital and the opening of the river. Yet . . . the foreigners seek to take advantage of us in many [other] ways [as well], even seeking to transport goods between our own domestic ports for sale.”⁹⁹ He later went so far as to argue, in direct contravention of the emperor, that “at this time, to accomplish the foremost aim of preserving *guoti*, the key matter is to take back our economic authority [*liquan* 利权].”¹⁰⁰ In repeated memorials, He argued for the importance of the ability to set tariffs for China’s autonomy, its national prestige, and its ability to conduct such important affairs as suppressing rebellions.¹⁰¹ Engaging in a risky course of insubordination, he also managed to convince fellow officials of the dangers of Xianfeng’s approach.¹⁰² His fellow representatives to the Tariff Conference, Huashana and Guiliang, themselves became convinced that China’s customs must remain in place to preserve China’s power and, as they remarked, “to esteem

guoti.”¹⁰³ In particular, the funding for regional military units – vital for confronting the Taiping rebels – was dependent upon customs revenue. Like Prince Gong but in contradiction to Xianfeng, these officials ascribed “stateliness” and “state form” less to the imperial person than to Qing finances, administrative institutions, and territory.

Remarkably, the emperor’s representatives never even informed their Western interlocutors of the offer that their ruler had made. He Guiqing instead negotiated for set tariff rates that would now be officially collected (as had already become unofficial practice since 1854) by the foreign-run MCS under titular Qing authority.¹⁰⁴ All along, the other officials had sought to persuade Xianfeng to abandon his proposal, including by appealing to his sense of dignity by arguing that “Western foreigners pay [customs] tax in place of tribute, and if this tax were exempted, it would further promote their habit of despising the Celestial Empire.”¹⁰⁵ However, Xianfeng still considered the matter of financial administration to be far removed from the essence of the state’s structure or dignity, and open for extensive flexibility and compromise. As to the demand for permanent diplomatic representation, he continued to exhort his officials to “rescue” the unacceptable situation: If they failed to do so, “not only will you be unable to face Me; how will you face the Empire?”¹⁰⁶

After the failure of his representatives to deliver on his desired policies, Xianfeng ordered a quixotic military resistance that featured one victory in June 1859 at the Taku Forts by Tianjin, though defeat at the same strategic point the next year decided the outcome of the conflict. In the face of invasion, the emperor retreated to Manchuria in 1860, leaving Prince Gong behind to negotiate the war’s end and the new terms of relations with the West.¹⁰⁷ In October 1860, British-led forces stormed Beijing and committed the now-infamous sacking of the Summer Palace, claimed to be a reprisal for mistreatment of Western prisoners but also, in Elgin’s words, “a blow to [the emperor’s] pride as well as his feelings.”¹⁰⁸

Although notions of what would later be called “international criminal law” had an indefinite presence in law of war doctrine at the time, the paradigm of criminality suffuses Elgin’s explanation for his decisions. His choice to punish the emperor rather than lower-level officials was based in part on what he viewed as the former’s “responsibility” for violations of the 1858 Treaty and mistreatment of prisoners, and in part on prudential and economic considerations. To punish other officials for specific acts, such as the truce-breaking attacks by the Mongol general Sengge Rinchen, would for Elgin have meant “throwing the responsibility for the acts of Government . . . on individuals,” which “resembles too closely the Chinese mode of conducting war.”¹⁰⁹ Meanwhile, imposing heavier reparations costs on the Qing would have interfered with the need to “appropriate [only] such a portion of the Customs Revenue, as will still leave to [China] a sufficient interest in that Revenue, to induce it to allow the natives to continue to trade with foreigners.”¹¹⁰ By contrast, injuries to imperial “feelings” and “prestige” were very

much to be desired, in part for reasons having to do with securing economic rights:

[T]he Emperor's affectation of superiority is not in itself of much consequence to other sovereigns, but it has an unfavourable bearing as regards the validity of the treaty rights which they obtain from him on behalf of their subjects, because it imparts to them in some sort the character of concessions made of pure grace by a suzerain to vassals and enjoyed therefore under some not very definable conditions of fealty.¹¹¹

To deliberately injure China's *guoti* in the sense of diminishing the prestige of the imperial office was, therefore, a calculated effort justified by rational economic interests as well as Britain's own concerns over dignity and "stateliness." In negotiating an end to hostilities, Prince Gong clearly understood himself to be unable to secure any significant concessions, including preventing the opening of the Yangzi River that he had viewed with such trepidation two years earlier. The only consolation was that the Convention of Beijing served mainly to reinforce the commitments of the Treaties of Tianjin rather than add major new obligations. However, Xianfeng's anathema, full formal equality in diplomacy, was very much included.

In order to deal with the new postwar reality, Prince Gong petitioned to create a new office to handle diplomatic matters with the West.¹¹² To be sure, Xianfeng by this point recognized the need to accept the imposed change of circumstances. However, his initial reaction to the memorial suggested a continued stubborn failure to grasp the full scope of the situation. While approving Prince Gong's proposal, he also, as was his imperial prerogative, personally decided on a name for the new bureau: "The Office in Charge of Affairs Relating to Commerce with the Various Nations."¹¹³ For the emperor, it seemed, foreign affairs and the incursions of Western states were still essentially matters restricted to the realm of trade, not to any larger political or legal world order in which his empire was embedded.

Prince Gong responded by requesting in another memorial that the word "trade" (*tong shang* 通商) be removed, ostensibly to avoid the "suspicion that I and other ministers will only conduct trade, but not handle [other] affairs."¹¹⁴ Whatever the emperor's original intentions, he again approved his brother's request, and the "Zongli Yamen" was established. This office would gradually begin China's engagement with the ideas and practices of international law.¹¹⁵ Xianfeng, though, would not live to see it. In August 1861 the thirty-year-old Iju passed away suddenly, ostensibly of illness, at his palace in Jehol. Following his death, although he had left orders for his five-year-old successor to be supervised by eight regents from his entourage, this group was suppressed in a rapid coup by Prince Gong, allied with Xianfeng's widows Cixi and Ci'an and their clans.¹¹⁶ The titular reign of the young Tongzhi emperor would proceed under the coregents' authority and also, for

the first time ever, with a foreign diplomatic community ensconced in the capital and foreign gunboats enjoying free rein over China's internal waters.

Conclusion

Qing officials and intellectuals viewed the imposition of the Western international legal order through the lens of their own lexicon of public law concepts, which were more nuanced than the traditional Han Chinese rhetoric of a universal mandate of Heaven would suggest. Though Qing authority had never been construed in the terms of "inner" and "outer" sovereignty as developed in the West since the thought of Jean Bodin,¹¹⁷ this did not preclude roughly equivalent relations between one great *gurun* and others, especially those too distant to be targets or threats in land-based conquest. Neither universal rule nor state sovereignty, but rather the relational value of *guoti* – foreign deference as to the key points of China's "stateliness," with varying views as to what exactly they comprised – was the standard determining how such relations should be handled.

For centuries before the mid nineteenth-century turn, China had already been tied to processes of capitalist protoglobalization through flows of silver and commodities such as silk, ceramics, tea, and cotton.¹¹⁸ Its relationship with Western states and their merchants had subsequently changed dramatically in the post-Napoleonic era of rising free market ideology, intra-European peace, and liberal empire, especially after the end of the British East India Company's monopoly on the China trade in 1833.¹¹⁹ But, while both the First Opium War and the religious/economic/legal proselytization efforts of Karl Gützlaff and likeminded emissaries were harbingers of later changes, it was not until the late 1850s that China's place in world order was comprehensively transformed; in place of a *catena* of commercial/jurisdictional relationships, there was now a united front of "the West" and the imposition of a multilateral legislative/regulatory regime. In the brief span between 1856 and 1860, the rules of the "European system," encoded in the so-called public law of Europe, were effectively globalized over the course of the Ottoman admission, formal annexation of India, opening of Japan, and imposed reconstitution of the Qing. Economic, geopolitical, and legal expansion proceeded in tandem into these vast non-Western spaces.

In the classical self-understanding of the international law profession, these events were generally treated as isolated peripheral elements of an era when the *droit publique de l'Europe* progressively evolved into *droit publique international*; a process of gradual universalization.¹²⁰ Many later historians of the field have however noted the ways that newly globalized doctrines of multilateral diplomacy, internationalized regulatory spaces, and liberalized trade favored Western interests at the expense of those of their interlocutors in "outside" zones of expansion.¹²¹ One influential view of this shift toward transitive legislation of non-European spaces has seen in it the displacement

of a “natural law” with a “positivist” conception of the law of nations.¹²² That supposed shift away from natural law has, however, sometimes been seen as exaggerated.¹²³ For the ultra-conservative twentieth-century jurist Carl Schmitt, for example, the “common land appropriations” by European powers through the nineteenth century were still largely continuous with prior eras in which shared ideas of private *dominium* ensured that “[despite] territorial change[s], the international economic order . . . retained all the . . . safeguards that it needed to function.”¹²⁴

That description of the period’s legal-economic expansionism as a collective project has been shared by critical observers who (unlike Schmitt) saw it as illegitimate and unjust. As Karl Marx phrased it during just this period, “[t]he tendency to create the world market is directly given in the concept of capital itself. Every limit appears as a barrier to be overcome.”¹²⁵ From the Qing perspective, certainly, the newly imposed structures of international law and political economy came to China in 1860 as a package and in the form of a collective Western project. They also prompted new and at times prescient, if inconsistent, invocations of the value of *guoti*. While Xianfeng offered tariff-free trade in the name of preserving the sacredness of the imperial space and his imperial person, for some of his key officials loss of economic authority/*liquan*, or vulnerability to territorial incursions, seemed still more important elements of “stateliness.” Though China in 1860 could not avoid concessions on any of these grounds, each would inform subsequent, sometimes conflicting aims that colored the reception of Western international law.